



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[AMS-SC-17-0067; SC17-959-4]

**Onions Grown in South Texas; Proposed Amendment to
Marketing Order 959**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule invites comments on a proposed amendment to Marketing Order No. 959, which regulates the handling of onions grown in south Texas. The proposed amendment would reduce the size of the South Texas Onion Committee (Committee) and make conforming and clarifying amendments as needed. The amendment would adjust the number of handlers and producers on the Committee to reflect a decrease in the number of onion producers and handlers in recent years.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement

Division, Specialty Crops Program, AMS, USDA, 1400
Independence Avenue SW, STOP 0237, Washington, DC 20250-
0237; Fax: (202) 720-8938; or internet:
<http://www.regulations.gov>. All comments should reference
the document number and the date and page number of this
issue of the Federal Register and will be made available
for public inspection in the Office of the Docket Clerk
during regular business hours, or can be viewed at:
<http://www.regulations.gov>. All comments submitted in
response to this proposed rule will be included in the
record and will be made available to the public. Please be
advised that the identity of the individuals or entities
submitting the comments will be made public on the Internet
at the address provided above.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones,
Marketing Specialist, or Julie Santoboni, Rulemaking Branch
Chief, Marketing Order and Agreement Division, Specialty
Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop
0237, Washington, DC 20250-0237; Telephone: (202) 720-2491,
Fax: (202) 720-8938, or E-mail:
Geronimo.Quinones@ams.usda.gov or
Julie.Santoboni@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in south Texas. Part 959 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Marketing Order and is comprised of onion producers and handlers operating within the area of production.

Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorizes amendment of the Order through this informal rulemaking

action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule, and based on all the information available, will determine if the Order amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued and producers would be allowed to vote for or against the proposed Order amendment. AMS would then issue a final rule effectuating any amendments approved by producers in the referendum.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering onions grown in south Texas.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section

8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the Order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the "Initial Regulatory Flexibility Analysis" section of this proposed rule.

The proposed amendment was unanimously recommended by the Committee following deliberations at a public meeting held on June 7, 2017. The proposal would amend the Order

by reducing the size of the Committee from 34 to 26 members. The change would remove one voting producer and handler member, and one alternate producer and handler member from each of the two districts.

Proposal - Reduce Committee Size

Section 959.22 provides that the Committee consists of seventeen members, ten of whom shall be producers and seven of whom shall be handlers. For each member of the Committee there shall be an alternate.

This proposal would amend § 959.22 by reducing the size of the Committee from 34 to 26 members. The Committee size is based on membership per district. The Order initially established five districts, which were reestablished as two districts in § 959.110. Section 959.111 reapportioned the 34 Committee members between the two districts so that District 1 was comprised of 20 members and alternates and District 1 was comprised of 14 members and alternates. However, due to contractions in the size of the industry, the Committee has had difficulties finding nominees to fill positions on the Committee. The change would remove one voting producer and handler member, and one alternate producer and handler

member from each of the two districts (eight members total). Conforming and clarifying changes would also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 would be removed.

This proposed action is necessary to adjust the number of handlers and producers on the Committee to reflect industry consolidation. There has been a decrease in the number of onion producers and handlers over the past 15 years. The current structure of the Committee requires 34 members, with half the members elected on biennial terms. Many seats remain vacant, as finding sufficient members to nominate has been challenging. Having a smaller size committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

For the reasons stated above, it is proposed that § 959.22 be modified to reduce the size of the Committee from 34 to 26 members. Conforming and clarifying changes would also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 would be removed.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 60 producers of onions in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

Based on information from the National Agricultural Statistics Service, the weighted grower price for South

Texas onions during the 2015-16 season was approximately \$12.30 per 50-pound equivalent. Furthermore, according to Committee data, total shipments were approximately three million 50-pound equivalents for the 2015-16 season with a total 2015-16 crop value estimated at \$37 million. Dividing the crop value by the estimated number of producers (60) yields an estimated average receipt per producer of \$617,000. This is below the \$750,000 SBA definition of small producers. The average handler price for South Texas onions during the 2015-16 season was approximately \$14.05 per 50-pound equivalent. Multiplying the average handler price by shipment information of 3 million 50-pound equivalent results in an estimated handler-level value of \$42 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of \$1.4 million, which is below the SBA definition of small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of South Texas onions may be classified as small entities.

The amendment proposed by the Committee would reduce the size of the Committee from 34 to 26 members under the

Order. The reduction would remove one voting producer and handler member, and one alternate producer and handler member from each of the two districts.

The Committee's proposed amendment was unanimously recommended at a meeting on June 7, 2017. If this proposal is approved in referendum, there would be no direct financial effects on producers or handlers. Over the past 15 years there has been a 31-percent decrease in the number of onion producers, and a 34-percent decrease in the number of handlers in the production area. Many seats on the Committee remain vacant, as it has been challenging to find sufficient nominees. Having a smaller size Committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

The Committee believes this change will serve the needs of the Committee and the industry. No economic impact is expected if the amendment is approved because it would not establish any regulatory requirements on handlers, nor does it contain any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if this proposal

is approved.

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes that given reductions in the size of the industry, a smaller Committee size is necessary in order to ensure its ability to locally administer the program. Reducing the size of the Committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 (Vegetable and Specialty Crops). No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meeting was widely publicized throughout the South Texas onion production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 7, 2017, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposal.

Finally, interested persons are invited to submit comments on the proposed amendment to the Order, including comments on the regulatory and information collection impacts of this action on small businesses.

Following analysis of any comments received on the amendment proposed in this proposed rule, AMS will evaluate

all available information and determine whether to proceed. If appropriate, a proposed rule and notice of referendum would be issued, and producers would be provided the opportunity to vote for or against the proposed amendment. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the *Federal Register*. A final rule would then be issued to effectuate any amendment favored by producers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the FOR **FURTHER INFORMATION CONTACT** section.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 959; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such

findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 959 as hereby proposed to be amended and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 959 as hereby proposed to be amended regulates the handling of onions grown in South Texas and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Marketing Order;

3. Marketing Order 959 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 959 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences

in the production and marketing of onions produced or packed in the production area; and

5. All handling of onions produced or packed in the production area as defined in Marketing Order 959 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to this proposal. Any comments received on the amendment proposed in this proposed rule will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendment. If appropriate, a final rule would then be issued to effectuate the amendment favored by producers participating in the referendum.

List of Subjects in 7 CFR Part 959

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959 – ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise 925.22 to read as follows:

§ 925.22 Establishment and membership.

The South Texas Onion Committee, consisting of thirteen members, eight of whom shall be producers and five of whom shall be handlers, is hereby established. For each member of the Committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

3. Revise 959.24 to read as follows:

§ 959.24 Districts.

To determine a basis for selecting Committee members, the following districts of the production area are hereby established:

District No. 1: (Coastal Bend-Lower Valley) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

District No. 2: (Laredo-Winter Garden) The Counties of Zapata, Webb, Jim Hogg De Witt, Wilson, Atascosa, Karnes Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

4. Revise 959.26 to read as follows:

§ 959.26 Selection

The Secretary shall select members and respective alternates from districts established pursuant to § 959.24 or § 959.25. Selections shall be as follows:

District No. 1: five producer members and alternates; three handler members and alternates.

District No. 2: three producer members and alternates; two handler members and alternates.

5. Revise 959.32 paragraph (a) to read as follows:

§ 959.32 Procedure

(a) Nine members of the Committee shall be necessary to constitute a quorum. Seven concurring votes, or two-thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any Committee action. At assembled meetings all votes shall be cast in person.

* * * * *

§§ 959.110 and 959.111 [Removed and Reserved]

6. Remove and reserve §§ 959.110 and 959.111.

Dated: February 23, 2018

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

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